IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 177 of 2002
with
Civil Application No. 2946 of 2002
and
APPEAL FROM ORDER NO. 179 of 2002
AND
Civil Application No. 2962 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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VIMLABEN DHIRUBHAI
Versus
SHAILESH MOHANBHAI PATEL

Appearance:
1. Appeal from Order No. 177 of 2002
MRS KETTY A MEHTA for appellant No. 1-2
MR PJ KANABAR for Respondent No. 1 and 2
UNSERVED-REFUSED (N) for Respondent No. 3
MR AJ PATEL for Respondent No. 4 and 5
Mr. DD Vyas Sr. Advocate with Mr. U.M. Panchal for M/s. Vyas Associates for respondent Nos.6 - 7.

2. Appeal from Order No.179 of 2002
MR DD VYAS SR. ADVOCATE with MR UM PANCHAL for M/s. Vyas Associates for appellants.

Mr. PJ Kanabar for respondent Nos.1 and 2
Mrs. Ketty A. Mehta for respondent Nos.3 - 4
UNSERVED-REFUSED (N) for respondent No.5
Mr. A.J. Patel for respondent Nos. 6 & 7.

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 02/05/2002

COMMON ORAL JUDGEMENT

1. In these Appeals from Order which are filed under Order 43 Rule 1 (r) of the Code of Civil Procedure ('the Code' for short), appellants seek to challenge the order dated April 6, 2002 recorded below application Ex.5 in Special Civil Suit No. 65 of 2000 by the learned 5th Joint Civil Judge (S.D.)., Surat by which application Ex.5 filed under Order 39 Rule 1 and 2 of the Code by respondent Nos.1 and 2/original plaintiffs against appellant No.1 of Appeal from Order No. 177 of 2002/ defendant No.1 restraining her from transferring, alienating, developing or putting up construction on the land bearing S.No. 115/1 situated at Athwa Lines, Surat (hereinafter referred to as 'the suit land') came to be allowed and thereby injunction as prayed for in para 6 (A) of the application is granted against appellant No.1 in AO No.177 of 2002.

2. Vide order dated April 17, 2002 both the Appeals were admitted and in Civil Applications filed alongwith the Appeals rule came to be issued and stay of the impugned order granted by the learned trial court was ordered to be continued till next date on the same terms an conditions which have remained operative even till today.

3. Today the matters are listed for hearing of Civil Applications. Ms. K.A. Mehta, learned advocate for appellants of AO No.177 of 2002, Mr. D.D. Vyas, learned Sr. Advocate for M/s. Vyas Associates for appellants of AO No.179 of 2002, Mr. P.J. Kanabar, learned advocate for respondent Nos.1 and 2 and Mr. A.J. Patel, learned advocate for original defendant Nos.4 and 5 are present. They jointly submitted that both the Appeals from Order can be disposed of with a direction to expedite Special Civil Suit No. 65 of 2000 which is pending before the learned 5th Joint Civil Judge (S.D.)., Surat for final disposal and during that period appropriate orders may be passed on the stay applications which would safeguard the interest of all the concerned parties.

4. In view of this, without entering into the merits and demerits of the pleadings and contentions of both the parties, these Appeals from Order are disposed of with the following directions:

i) The learned District Judge of Surat is directed to assign Special Civil Suit No.65 of 2000 to any of the Civil Judges (S.D.)., Surat, other than the Civil Judge (S.D.)., Surat who has decided application Ex.5 in this suit.

ii) It is further directed that the learned Civil Judge (S.D.)., Surat to whom the Special Civil Suit No.65 of 2000 shall be assigned by the learned District Judge, Surat, for final disposal, shall expedite the hearing of the suit and decide the same preferably on or before April 30, 2003.

iii) The order dated April 6, 2002 passed below application Ex.5 in Special Civil Suit No.65 of 2000 is quashed and set aside and accordingly now there is no injunction against the appellants of both the Appeals from Order.

iv) It is clarified that the appellants of both the Appeals from Order are permitted to develop the suit land at their own risks and costs and subject to the result of the final decision of the suit. The appellants of both the Appeals from Order shall not claim any equity on the development which they propose to make on the suit land. However, they are restrained from transferring or alienating the constructed portion as well as the suit land to third party till final disposal of the suit.

v) It is further clarified that appellants of both the Appeals from Order are permitted to go on with the construction provided that they obtain necessary permission from the competent authority to carry on construction on the suit land.

vi) The competent authority shall decide the application tendered by the appellants for getting permission to construct on the suit land, if not decided so far, in accordance with law and uninfluenced by the fact that by this order the appellants of both the Appeals from Order are granted permission to carry on construction on the suit land.

5. With the aforesaid observations and directions, both the Appeals from Order are disposed of with no order as to costs.

6. Since both the Appeals from Order are disposed of, both the above mentioned Civil Applications stand dismissed of with no order as to costs. Subject to the above observations and directions, interim relief stands vacated. Rule issued in each of the Civil Applications is discharged.

(A.M. Kapadia, J.)

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